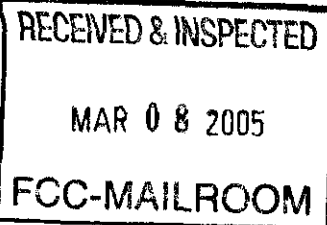


Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of )

Amendment of Section 73.202(b) )

Table of Allotments, )

FM Broadcast Stations. )

(Fishers, Lawrence, Indianapolis and )

Clinton, Indiana) )

MB Docket No. 05-67

RM-11116

**NOTICE OF PROPOSED RULE MAKING  
AND  
ORDER TO SHOW CAUSE**

**Adopted: March 2, 2005**

**Released: March 4, 2005**

**Comment Date: April 25, 2005**

**Reply Comment Date: May 10, 2005**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making jointly filed by Indy Lico, Inc., licensee of Station WISG(FM), Fishers, Indiana, and by WFMS Lico, Inc., licensee of Station WFMS(FM), Indianapolis, Indiana ("Petitioners"), proposing (a) the upgrade from Channel 230A to Channel 230B1 at Fishers, the reallocation of Channel 230B1 from Fishers to Lawrence, Indiana, and the modification of Station WISG(FM)'s license accordingly; (b) the reallocation of Channel 238B from Indianapolis to Fishers, Indiana, and the modification of Station WFMS(FM)'s license accordingly; and (c) the substitution of Channel 229A for Channel 230A at Clinton, Indiana, and the modification of Station WPRF-FM's license accordingly. Petitioners state their intention to apply for the respective channels, if reallocated.

2. The proposal was filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>1</sup> In support of its proposal, Petitioners state that Lawrence is located in Marion County and has a 2000 U.S. Census population of 38,915 persons. Lawrence has an elected mayor and city council. The city has its own zip code (46226) and website. Lawrence has its own police and fire departments, businesses and commercial establishments, health care services, and religious and community organizations.

3. The Commission now allows a station to change its community of license despite the presence of pre-1964 and pre-1989 "grandfathered" short-spacings and those permitted under Section 73.215 of the Commission's Rules when no site relocation is proposed.<sup>2</sup> Consistent with that policy, we note that

<sup>1</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990)

<sup>2</sup> See *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992); *Oceanside and Encinitas, California*; and *Berlin and North Conway, New Hampshire*, 14 FCC Rcd 15307 (1999) ((pre-1964 "grandfathered" short-spacing); *Fremont and Holton, Michigan*, 14 FCC Rcd 17108 (1999) (pre-1989 "grandfathered" short-spacing); and *Killeen and Cedar Park, Texas*, 13 FCC Rcd 18790 (1998) (Section 73.215 short-spacing).

Station WFMS(FM) is short-spaced to two pre-1964 "grandfathered" stations, Station WPDT(FM) and Station WIJY(FM), and one Section 73.215 station, Station WVNI(FM). However, since Station WFMS(FM) does not seek to change its transmitter site, no new short-spacing would be created, and no existing short-spacing would be exacerbated, Station WFMS(FM) should be afforded the opportunity to change its community of license. Moreover, both Fishers and Lawrence are located within the Indianapolis, Indiana Urbanized Area, and Station WISG(FM)'s proposed site would place a 70 dBu signal over 62 percent of the Indianapolis, Indiana Urbanized Area. Accordingly, Petitioners have provided the required *Tuck* analysis.<sup>3</sup> Since Station WISG(FM) seeks to change its transmitter, Petitioners have also provided a gain and loss area study. Petitioners further state that the gain and loss areas are well-served with five or more reception services.

4. Whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefitting party, or parties, to reimburse the affected station for costs incurred.<sup>4</sup> In this instance, the proposed modification will enable Lawrence to have its first local broadcast service. As indicated earlier, to accommodate Channel 230B1 at Lawrence, it is necessary to substitute Channel 229A for Channel 230A at Clinton, Indiana and modify the license of Station WPFR-FM to specify operation on Channel 229A. Petitioners have stated their willingness to reimburse the licensee of Station WPFR-FM in Clinton, Indiana, for reasonable costs associated with changing to Channel 229A.

5. We believe the proposal warrants consideration because the reallocation of Channel 230B1 to Lawrence, Indiana, would provide the community with its first local aural transmission service, and allow Station WISG(FM) to expand its service area. The reallocation would not deprive Fishers (population 37,835) of its sole local service because the reallocation of Channel 238B to Fishers, Indiana, is proposed herein as a replacement service. An engineering analysis has determined that Channel 230B1 can be reallocated to Lawrence in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) south at Station WISG(FM)'s requested site.<sup>5</sup> Additionally, Channel 238B can be reallocated to Fishers at Station WFMS(FM)'s presently licensed site;<sup>6</sup> and Channel 229A can be substituted at Clinton at Station WPFR-FM's presently licensed site.<sup>7</sup> As requested, we will propose the reallocation of Channel 230B1 to Lawrence, Indiana, as Station WISG(FM)'s new community of license, and the reallocation of Channel 238B to Fishers, Indiana, as Station WFMS(FM)'s new community of license. In accordance the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 230B1 at Lawrence, Indiana, or for Channel 238B at Fishers, Indiana, or require Petitioners to demonstrate the existence of equivalent class channels for use by other interested parties.

6. Accordingly, we seek comment on the proposed amendments of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Fishers, Indiana	230A	238B

<sup>3</sup> See *Long Beach and East Los Angeles, California*, 10 FCC Rcd 28672 (1995); see also *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc.*, 5 FCC Rcd 3222 (1990); and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

<sup>4</sup> See *Circleville, Ohio*, 8 FCC 2d 159 (1967).

<sup>5</sup> The coordinates for Channel 230B1 at Lawrence are 39-43-37 North Latitude and 86-03-00 West Longitude.

<sup>6</sup> The coordinates for Channel 238B at Fishers are 39-46-03 North Latitude and 86-00-12 West Longitude.

<sup>7</sup> The coordinates for Channel 229A at Clinton are 39-33-01 North Latitude 87-28-32 West Longitude

Lawrence, Indiana	---	230B1
Indianapolis, Indiana	226B, 234B, 238B 242A, 277B, 289B, 300B	226B, 234B, 242A, 277B, 289B, 300B
Clinton, Indiana	230A	229A

7. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Word Power, Inc., licensee of Station WPFR-FM, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 229A in lieu of Channel 230A at Clinton, Indiana.

8. Pursuant to Section 1.87 of the Commission's Rules, Word Power, Inc., may, no later than April 25, 2005, file a written statement showing with particularity why its respective license should not be modified as proposed in this *Order to Show Cause*. The Commission may call on Word Power, Inc., to furnish additional information. If raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modifications, deny the modifications, or set the matter of modifications for hearing. If no written statement is filed by the date referred to above, Word Power, Inc., will be deemed to have consented to the modification as proposed in this *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel modification is found to be in the public interest.

9. IT IS FURTHER ORDERED, That a copy of this *Notice of Proposed Rule Making and Order to Show Cause*, be sent by Certified Mail, Return Receipt Requested, to the following:

Word Power, Inc.  
18889 North 2350 Street  
Dennison, Illinois 62423  
(Licensee for Station WPFR-FM)

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the *Appendix* before a channel will be allotted.

11. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before April 25, 2005, and reply comments on or before May 10, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the counsel for petitioner, as follows:

Mark N. Lipp, Esq.  
Vinson & Elkins, L.L.P.  
1455 Pennsylvania Ave., N.W., Ste. 600  
Washington, D.C. 20004-1008

12. Parties are required to file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The

Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to Marlene H. Dortch, Secretary, Office of the Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. Sec. 1.7. Accordingly, failure to follow the specified filing requirements may result in the treatment of a filing as untimely.

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>8</sup> This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

14. For further information concerning a proceeding listed above, contact Sharon P. McDonald, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau

Attachment: Appendix

<sup>8</sup> See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

## APPENDIX

1. Pursuant to authority found in Sections 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the M Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making and Order to Show Cause* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making and Order to Show Cause* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 47 C.F.R. Section 1.420(d)).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making and Order to Show Cause* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service (see 47 C.F.R. Section 1.420(a), (b) and (c)). Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Information Reference Center (Room CY-A257) at its headquarters, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.